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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,947	08/20/2001	Ulrich Reinehr	BAYER 10,219	5904
7590 03/12/2004				
Norris McLaughlin & Marcus 220 East 42th Street 30th Floor New York, NY 10017			EXAMINER TENTONI, LEO B	
			ART UNIT	PAPER NUMBER
			1732	

DATE MAILED: 03/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/913,947

Applicant(s)

REINEHR ET AL.

Examiner

Leo B. Tentoni

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 15-33 is/are allowed.
- 6) ☒ Claim(s) 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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### DETAILED ACTION

1. The objection to the disclosure and the rejection of claims 4; 6, 20-22, 26, 28, 31 and 33 under 35 USC § 112, second paragraph set forth in the previous Office Action (mailed on 26 August 2003) are with drawn.

### *Drawings*

2. The drawings were received on 19 December 2003. These drawings are accepted.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Reinehr et al (DE 19504316 C1).

Reinehr et al (see the entire document, in particular, Tables 1-4) teach elastane fibers having a titer of up to 10,000 dtex (i.e., a titer less than, or equal to, 10,000 dtex), fiber (or tensile) strengths of 0.5 to 0.95 cN/dtex and an elongation at tear (or break) of 500 to 750%. Note that claim 14 is a product-by-process claim, and even though product-by-process claims are limited by and defined by the process, the determination of patentability is based on the product itself and

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does not depend on its process of production (*In re Pilkington*, 411 F.2d 1345, 162 USPQ 145 (CCPA 1969); *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983); *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985)).

#### ***Allowable Subject Matter***

5. Claims 1-13 and 15-33 are allowable over the prior art references presently of record.

#### ***Response to Arguments***

6. Applicant's arguments filed on 19 December 2003 have been fully considered but they are not persuasive. Applicant argues (pages 9 and 10) that the fibers of instant claim 14 incorporate waste material and the prior art references presently of record do not suggest or teach elastane fibers which comprise waste material. Examiner responds that the fibers of instant claim 14 are made from waste elastane fibers (i.e., the waste material is waste elastane fibers). In the instant process, these waste elastane fibers are processed into an elastane spinning solution, fresh elastane spinning solution may be (optionally) added thereto, and this elastane spinning solution is dry-spun or wet-spun to make elastane fibers. Thus, the fibers of instant claim 14 are elastane fibers, and whether the elastane spinning solution is made from waste elastane fibers, or from fresh elastane spinning solution, or from both, the composition of the fibers of instant claim 14 is still elastane. Reinehr et al teach elastane fibers as set forth in instant claim 14.

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**Conclusion**

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leo B. Tentoni whose telephone number is (571) 272-1209. The examiner can normally be reached on Monday - Friday (6:30 A.M. - 3:00 P.M.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Leo B. Tentoni*

Leo B. Tentoni  
Primary Examiner  
Art Unit 1732

lbt